

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5700 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SANKABHAI DEVKARANBHAI DESAI

Versus

SARPANCH, VEJALPUR GRAM PANCHAYAT

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Appearance:

MR SG UPPAL for Petitioner

None present for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/12/96

C.A.V. JUDGEMENT

1. The matter was called out for hearing in the first round then in the second round and lastly, in the third round, but nobody has put appearance on behalf of the respondent.

2. Heard Shri S.G. Uppal for the petitioner and perused the record. The brief facts of the case are that the petitioner was doing and running a Refreshment

Restaurant in the rented premises which is said to be residence-cum-business premises situated at Jivraj Park, Char-rasta, Vejalpur, Ahmedabad since last many years. The petitioner has stated that he is doing the business in the walled-shed having fixed therein fixtures and furniture costing more than Rs.1000/-. The petitioner has further stated that the earning which he draws from doing the business at the walled-shed of the aforesaid premises is the only source of income of the family. The petitioner is paying regularly rent to the landlord and landlord has no objection whatsoever to allow and permit the petitioner to carry on his tea-stall in the rented premises. The petitioner has applied for the licence to the respondent, Vejalpur Gram Panchayat. The petitioner was granted the licence by the Ahmedabad Municipal Corporation which was renewed from year to year. In the last month, in the town of Vejalpur, the respondent has started demolishing kachchha sheds through its Encroachment department and in company with the Ahmedabad Municipal Corporation for the removal of the sheds alongwith other illegal constructions, carried out either on the Corporation's plot, or in the public streets. The petitioner having the apprehension that in the aforesaid drive, walled-shed may also be demolished, appears to have filed this Special Civil Application before this Court.

2. On 24th October, 1986, notice was issued, but despite of service of notice, nobody has put appearance on behalf of the respondent and this court has passed the order on 14th September, 1987 which reads as under:

Though served no one appears on behalf of the respondents.

Rule.

Interim relief in terms of Para 13(b). It will be open to the respondent to move the Court and request for modifying and vacating the interim relief even by filing a note.

Though this court has granted the liberty to the respondent to move the court and request for modification or vacation of the interim relief even by filing a note, but I do not find anything on the record of this Special Civil Application that at any point of time till date, the respondent has moved any note or application for modification or vacation of the interim relief granted by this court in favour of the petitioner on 14th September, 1987. Not only this, but even the respondent has not cared to file any reply to this Special Civil

Application. The counsel for the petitioner is also not in a position to say that what is the existing situation in the present case today. Be that as it may. The matter has to be considered on merits.

3. The prayer has been made by the petitioner in this Special Civil Application that by issuing a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus, directing the respondent not to disturb the petitioner, in carrying out his business at his residential address and further restraining the respondent from demolishing or removing the residential-cum-business premises of the petitioner.

4. Looking to the facts of the present case, the averments made in this Special Civil Application and the fact that the respondent has not filed any reply to this Special Civil Application and lastly that this court has protected the petitioner by grant of the interim relief for all these years, the interest of justice will be met in case this Special Civil Application is disposed of in the terms that in case, the walled shed of the petitioner at the existing site (premises) is considered to be illegal or otherwise encroachment on the Corporation or the land of the respondent, then it shall be open to the respondent to take appropriate action against the petitioner of demolishing the same after giving him the notice and an opportunity of hearing. Rule is made absolute in the aforesaid terms with no order as to costs.

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zgs/-